

E-FILED

PATENT APPLICATION  
Docket No.: 15436.440.11

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Tzu-Yu Wang et al.	)
		)
Serial No.:	10/606,104	)
		) Art Unit
Filing Date:	June 25, 2003	) 2828
		)
Confirmation No.:	4209	)
		)
Title:	InP BASED LONG WAVELENGTH	)
	VCSEL	)
		)
Examiner:	Phillip Nguyen	)
		)
Customer No.:	022913	)

**RESPONSE TO RESTRICTION AND ELECTION OF SPECIES**  
**REQUIREMENTS**

**MAIL STOP: AMENDMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants submit this paper in response to the Office Action mailed March 12, 2007 (the "Office Action"). In the Office Action, the Examiner set forth restriction and election of species requirements.

**I. Restriction Requirement**

The restriction requirement made by the Examiner identified what the Examiner has characterized as two (2) distinct inventions. In particular, the Examiner suggested in

the Office Action that the present application contains claims directed to the following two inventions:

- Group I: Claims 1-18, 20-22, 31, 33 and 35-36, drawn to vertical cavity surface emitting laser, classified in class 372, subclass 50.124; and
- Group II: Claims 23-30 and 37, drawn to a method for making a vertical cavity surface emitting laser, classified in class 428, subclass 22.

In response to the restriction requirement set forth in the Office Action, Applicants hereby elect Group I (Claims 1-18, 20-22, 31, 33 and 35-36), without traverse.

## **II. Election of Species Requirement**

The Examiner has indicated that if Applicants elect from Group I, Applicants are required to elect a single disclosed species from one of the following:

- Group 1. Claims 8-15 and 36; and
- Group 2. Claims 1-7, 16-18, 20-22, 31, and 33.

The Examiner indicated that currently, no claim is generic.

The Examiner has also indicated that if Applicants elect Group 2, the following restriction is further required:

- Group A. Claims 1-7; and
- Group B. Claims 16-18, 20-22, 31, and 33.

In response to the Election of Species Requirement set forth in the Office Action, Applicants hereby elect Group 1, Claims 8-15 and 36 without traverse.

Applicants note that while the election set forth herein is made without traverse, the mere fact that no traverse is made does not constitute, and should not be construed as, an assessment or judgment by the Applicants as to the merits, if any, of: the characterization of the claims and species advanced by the Examiner in the election of species requirement set forth in the Office Action; or, any other assertions, allegations, statements or characterizations made by the Examiner in that election of species requirement.

Applicants' election herein is made without prejudice. As noted by the Examiner, upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species that are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141.

An action on the merits of claims 8-15 and 36 and a Notice of Allowance thereof are respectfully requested. In the event that the Examiner wishes to discuss any of the matters contemplated hereby, the Examiner is invited to initiate a telephone conversation with the undersigned.

Dated this 12<sup>th</sup> day of April, 2007

Respectfully submitted,

/Peter F. Malen, Jr./

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PFM/gpm